IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

His Highness Maharaja Shri Umaid
Singh Religious Trust, Jodhpur
Vs.
Union of India & Others
(S.B. Civil Writ Petition No.6196/2003)

DATE OF ORDER : April 23rd, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr.L.R. Mehta for the petitioner.
Mr. Kuldeep Mathur for the U.O.I.

BY THE COURT :

The present writ petition, filed under Articles 226 and 227 of the Constitution of India, is directed against the order dated 19.07.2003 passed by Civil Judge (Sr. Dn.) & Addl. Chief Judl. Magistrate, Mt. Abu (hereinafter, 'the trial Court') in the civil suit, whereby the trial Court has allowed applications moved by the contesting respondents – one, under Order VII Rule 3, C.P.C. and the other, under Order XIV Rule 5, C.P.C.

In the writ petition, the petitioner claims that consequent upon the covenant signed for integration after independence of the country, the erstwhile ruler of Jodhpur was allowed to retain certain properties as his private properties through letter dated 24th March, 1949 of the Government of India and those properties were mentioned in the Schedule appended to the letter dated 24.03.1949. It is averred that the suit property known as Jodhpur House, Mt. Abu was included in the inventory under letter dated 24.03.1949. The plaintiff-petitioner Trust was set up vide trust-deed dated 05.07.1971, registered on 14.09.1971, and it is averred that the suit property was transferred to the absolute ownership of the said trust.

The facts averred in the writ petition disclose that the suit property was given on rent on 01.08.1962 for a period of 3 years to the Central police Training College (National Police Academy), Mt. Abu; and, after transfer of the property to the petitioner Trust, it was again let out vide lease deed dated 01.07.1974 to the Union of India for a period of three years i.e., upto 30th June, 1977. The petitioner claims in the writ petition that at present the suit property is occupied by Internal Security Academy, Mt. Abu – a department of respondent Union of India, as tenant of the petitioner Trust. The petitioner Trust has accepted the rent

from respondent No.4 from 01.02.1975 to 29.02.1996. It is also stated in the writ petition that at the expiry of the lease period the petitioner Trust gave a notice to the lessee to return vacant possession of the property to the lessor.

Claiming in the writ petition that the petitioner trust has been granted exemption in respect of the properties of the trust from the provisions of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 vide government notification published in the Rajasthan Raj Patra on 07.12.1992, after expiration of the lease period, though it was not necessary for the petitioner Trust to determine the lease by serving notice under Section 106 of the Transfer of properties Act, the petitioner served notice upon the contesting respondents on 22.10.1996 calling upon them to hand over vacant possession of the property to the petitioner Trust.

Despite notice as aforesaid, vacant possession of the suit property not having been handed over to the petitioner, the petitioner filed suit for eviction and damages in the Court of Civil Judge (Sr. Dn.), Mt. Abu on 25.01.1997. It is further stated in the writ petition that the defendants (contesting respondents herein) filed joint written statement on 07.08.2000 and, vide para 4 of the written statement, it was unequivocally admitted that the suit property 'Jodhpur House' was taken on rent by the

Union of India and various lease deeds were executed between the parties. The petitioner claims in the writ petition that the defendants stated in their written statement that the notice of termination of tenancy on 31.12.1996 has been ignored by the Central Government and the Central Government is not in a position to vacate the suit property in public interest. A copy of the written statement is placed on record as Annex.-2 to the writ petition.

A categorical reply to the writ petition is made to the effect, inter alia, that the premises in question are being used for police academy and trainings to Army etc. So, also, it was made clear (in the written statement) that upto 1996 rent was paid but subsequently, it was not accepted by the plaintiff/petitioner, hence could not be paid. Further it is submitted by the respondents that on 21.02.2003 order of determination of rent was passed.

After the order of determination of rent was passed on 21.02.2003, thereafter, as per the reply filed by the contesting respondents, they realised that there must be specification and accuracy about the premises in question. Therefore, in the circumstances, application under Order VII Rule 3, C.P.C. was filed.

On behalf of the petitioner Trust, it is submitted before the trial Court that without any reply to the application, they are ready to argue the applications. In respect of the application filed under Order VII Rule 3, C.P.C. it was contended before the learned trial Court that the defendants have not disputed the identity of the suit property at any stage and; in fact, it is admitted in the joint written-statement that they are tenants in the property known as Jodhpur House and they are occupying the said property of the petitioner Trust as tenants and, also, that they are paying rent to the petitioner Trust. It was contended on behalf of the plaintiff-petitioner that in the written-statement there is no objection taken by the defendants and, therefore, they are now not entitled to file application under Order VII Rule 3, C.P.C. It was further contended that admittedly lease-deeds were executed by the defendants in favour of the petitioner Trust in which it was clearly mentioned that the suit property is known as Jodhpur House, situated at Mt. Abu.

It is contended by learned counsel for the petitioner that the defendants admitted in their written statement that relationship of landlord and tenant exists between the petitioner Trust and defendants in respect of the suit property namely,

Jodhpur House at Mt. Abu. It is further contended that the burden of all the issues lay on the defendants only on account of admitted position in the case emerging from their written statement, therefore, in the circumstance, it was neither permissible nor was there any justification to submit the applications under Order VII Rule 3, C.P.C. and Order XIV Rule 5, C.P.C. It is vehemently contended that the only purpose of the above applications was to delay the disposal of the suit proceedings.

Learned counsel for the petitioner placed heavy reliance on the judgment of the Karnataka High Court in the case of Ambanna Vs. Ghanteappa, reported in AIR 1999 Karnataka 421. Under the lee of the said judgment, it is vehemently contended by learned counsel for the petitioner that **plaint should contain a description of the property sufficient to identify it**, and, in the event such description is absent in the plaint, no effective decree can be passed which can be finally put into execution for the benefit of the succeeding party; and, since the defendants at no stage took the objection and filed their joint written statement admitting the fact matrix of the situation of the property in question and further admitted the relationship of landlord and tenant between petitioner Trust and defendants in

respect of the suit property known as Jodhpur House, situated at Mt. Abu, there arose no occasion for employing the provisions of Order VII Rule 3 of the Code of Civil Procedure for further specification as to description of the suit property.

Drawing attention of the Court towards the provision of Order VII Rule 3, C.P.C. the learned counsel for the petitioner urged that it is clearly laid down in the said provision that where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property **sufficient to identify it**. Learned counsel for the petitioner vehemently contended that once the defendants, in their written statement, clearly admitted the fact matrix in relation to the suit property and further admitted the various lease-deeds executed by them in favour of the plaintiff-petitioner, and, till the stage of determination of rent, offered no objection, in law, it estopped them thereafter to call in question the identity of the property wherein they admitted themselves to be the tenants of the petitioner.

Turning to the other application moved under Order XIV Rule 5, C.P.C. by the defendants, learned counsel for the petitioner urged that in the said application the defendants prayed for framing three additional issues which are as follows :

"[ए] आया वादी ट्रस्ट को राजस्थान परिसर किराया एवं बेदखली अधिनियम के प्रावधानों में छूट प्राप्त है ?

[बी] आया वादी वादपत्र के पद संख्या 13 में वर्णित नोटिस के आधार पर प्रतिवादीगण से वादग्रस्त परिसर का कब्जा प्राप्त करने का अधिकारी है ?

[सी] आया प्रतिवादी संख्या 02 ने वादग्रस्त परिसर प्रतिवादी सेन्ट्रल रिजर्व पुलिस फोर्स को बिना पूर्व स्वीकृति वादी के हस्तांतरण कर दी ?"

Out of the above three issues the learned trial Court rejected the prayer of framing issue [ए] because that dispute was already decided by the trial Court vide order dated 01.02.2003 in the suit. The trial Court passed order for framing other two issues [बी] and [सी] as issues No.5 and 6.

Learned counsel for the petitioner argued that there is no requirement in the suit to frame additional issues No.5 and 6 calling upon the plaintiff to lead evidence and prove the issues. It is contended that in this case the defendants have not denied the exemption granted in favour of the petitioner plaintiff from the application of the provisions of Rajasthan Premises (Control of Rent & Eviction) Act, 1950. It is further submitted that a notice under Section 106 of the Transfer of Property Act was given in which defendants were called upon that their tenancy was terminated on 31st of December, 1996 (midnight) or on any

other day on which they thought their tenancy would expire and further called upon them to hand over vacant possession of the suit property. It is submitted that the defendants have not disputed the same because no reply was given to the notice, therefore, it is not open to allow application filed under Order XIV Rule 5, C.P.C. for framing additional issues. It is contended that even according to the defendants, defendant No.4 has been paying rent for the suit property and the plaintiff has been accepting the rent, therefore, in the midst of the proceedings when last opportunity had already been given to the defendant for production of evidence, it was entirely irrelevant to call upon the plaintiff to prove by evidence that defendants transferred the suit property to defendant No.4 without any prior permission of the plaintiff. Learned counsel for the petitioner vehemently contended that in the circumstances of undisputed facts on record, the trial Court committed grave error of law while proceeding to allow the application under Order XIV Rule 5, C.P.C. and to call the plaintiff to prove the fact in the additional issue framed by it. It is argued by learned counsel for the petitioner that, at the stage, in the facts and circumstances of the case, the applications are not even maintainable.

Per contra, by filing reply to the writ petition, the

contesting respondents contended that there is no error in the order passed by the trial Court while allowing both the applications filed under Order VII Rule 3, C.P.C. and Order XIV Rule 5, C.P.C. It is submitted by learned counsel for the respondents that no copy of notification with regard to exemption has been filed before the Court in this writ petition. It is further contended that in the plaint all that is said about the suit property is only to the effect that the property known as Jodhpur House at Mt. Abu was given on rent/lease to the respondents but no location/boundaries of the property in question was given nor measurements have been specified. Adverting to the judgment of the Karnataka High Court in the case of Ambanna Vs. Ghanteappa, reported in AIR 1999 Karnataka 421, it is submitted by learned counsel for the respondents that the trial Court discussed the judgment and allowed the application directing the petitioner to give boundaries and survey number by way of amendment of the plaint. It is further contended that the trial Court has rightly appreciated the controversy and allowed the applications whereby neither any irreparable harm is caused to the plaintiff nor the purpose of the suit is going to be frustrated.

I have perused the impugned order and carefully

considered the pleadings of the parties.

Aside from the afore-cited Karnataka High Court case, wherein, controversy with regard to partition of the suit property was involved which required specifications, the purpose of provisions contained in Rule 3 of Order VII of the Code of Civil Procedure may be considered not only in relation to requirement of the provision but also its application at particular stage of the suit. O.7 R.3, C.P.C. reads as under :

> "O.7 R.3.-Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property **sufficient to identify it**, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers."

Obviously, the purpose of such description being tendered in the plaint is identification of the property so that effective decree may be passed which can be finally put into execution for the benefit of the successful party. In the present case, admittedly the contesting defendants claim their tenancy in the suit property and have specifically averred that they paid rent to the plaintiff but; later on, the plaintiff refused to accept the rent. On the record, there is no dispute with regard to landlord and tenant relationship in between plaintiff and contesting respondents in respect of the suit property and, even when the defendants put

in their joint written-statement, there is no denial to the identity of the suit property and they have admitted the various lease deeds having been executed in furtherance of the tenancy in the suit property. Thus specificity as to the identity of the suit property is neither disputed nor there is any controversy with regard to defendants being in occupation of the suit property as tenant of the plaintiff. In these facts and circumstances, simply because boundaries or survey numbers are not mentioned in the plaint, it is not open to the defendants at a belated stage, having already admitted the fact position as to identity of the suit property and having admitted that they are tenants therein, to move application under Order VII Rule 3, C.P.C. to seek direction of the Court to the plaintiff for amendment of the plaint. Rule 3 manifestly says that in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. Thus, from perusal of the provision, it is clear that wherever it is possible to mention such detail, the same should be given. It may also be taken note of that title of the suit property or the plaintiff's lis in the property is nowhere in question. In this view of the matter, the trial Court has committed error in allowing the defendants' application moved under Order VII Rule 3, C.P.C. because, at the

stage of the trial, having once been judicially aware of the admitted position in the case, it was not only not necessary but irrelevant to the proceedings of the trial, at the stage, to allow such application.

It may be noted that the plaintiff had served notice upon the defendants under Section 106 of the Transfer of Property Act and it was specifically mentioned that the petitioner is exempt from the provisions of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 in respect of its properties. It is not disputed at any stage by the respondents and the suit itself was filed for relief under the Transfer of Properties Act, therefore, in these facts and circumstances, the trial Court had no occasion to frame additional issue No.5. Moreover, the issue is purely an issue of law and the defendants never pleaded in the Court in reply to the plaint that notice under Section 106 of the Transfer of Property Act was not in accordance with law. It may be observed here that the defendants do not dispute their occupation and possession of the suit property as tenants of the plaintiff Trust. The issue No. 6 is also not necessary because it is admitted fact on record that the suit property Jodhpur House at Mt. Abu was let out under an executed lease-deed to the Union of India and where the property is let out on rent to the Central

Government, it is irrelevant which department of the Union of India, the lessee is functioning in the let out premises. As a matter of fact, which department of the Central Government is functioning in the premises taken on rent by it has nothing to do with the question of eviction and handing over vacant possession, in the event of plaintiff's suit being decreed, because the ultimate relief sought by the plaintiff is directed against the Union of India through the Central Government. In the facts and circumstances, the additional issues framed in consequence of the application moved under Order XIV Rule 5, C.P.C. do not bear upon the controversy involved in the matter and, obviously, the decision of the additional issues cannot be said to be necessary for substantial justice in between the parties because the dispute in between the parties does not rest for its resolution upon the decision of these issues either.

Apart from the above, there are following specific pleadings in the written statement which require to be taken note of :

"13. यह कि वाद पत्र का पद संख्या 13 अस्वीकार है एवं जवाब है कि वादी का नोटिस दिनांक 31-12-1996 केन्द्रीय सरकार द्वारा जनहित में इग्नोर कर दिया गया है क्योंकि केन्द्रीय सरकार राष्ट् हित में यह संपत्ति खाली करने में असमर्थ है। By way of special pleading it is stated that, "यह कि वादग्रस्त भवन की आंतरिक सुरक्षा अकादमी को राष्ट्रहित में आवश्यकता होने से

वादग्रस्त संपत्ति को अधिग्रहण करने हेतु कार्यवाही चल रही है। उक्त कारण से वादी का वाद खारिज योग्य है।"

The above-quoted pleadings of the defendants in their joint written statement only go to show that the plaint as such is not denied by the defendants.

As a sequel to the above discussion, the writ petition is allowed. Order impugned dated 19.07.2003 Annex.-3 is set aside. Applications filed by the defendants under Order VII Rule 3, C.P.C. and Order XIV Rule 5, C.P.C. are dismissed.

There shall, however, be no order as to costs.

(Gopal Krishan Vyas) J.